Supreme Court, U.S.
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No. 01-1389

In The

Supreme Court of the United States

ALFRED S. HAYWARD, Personal Representative of the Estate of Delbert Lewis Hayward, Deceased,

Petitioner,

v.

VALLEY VISTA CARE CORPORATION, a non-profit corporation, d/b/a Valley Vista Care Center; SCOTT F. BURPEE and JAN BURPEE; JACK'S PHARMACY INCORPORATED; JACK BOTTS; CHAD BROWN and NANCY RENFREW; JERROLD E. PARK and RICHARD K. THURSTON, M.D., Co-Personal Representatives of the ESTATE OF W. DYCE THURSTON, M.D.,

Respondents.

On Petition For Writ Of Certiorari To The Idaho Supreme Court

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION OF ALFRED HAYWARD

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INTRODUCTION

Respondents, Valley Vista Care Corporation, Scott F. Burpee, Jan Burpee and Nancy Renfrew (Valley Vista), joined by Respondents, Richard K. Thurston, M.D., and Jerrold E. Park, Co-Personal Representatives of the Estate of W. Dyce Thurston, M.D., hereby submit this brief in opposition to the Petition of Alfred Hayward, Personal Representative of the Estate of Delbert Lewis Hayward (Hayward), for a Writ of Certiorari to the Idaho Supreme Court.

PERCEIVED MISSTATEMENTS OF FACT OR LAW

Pursuant to Supreme Court Rule 15.2, the Respondents list the following misstatements of facts and/or law contained within Hayward's Petition.

A. *Claim of "Egregious Facts"*: Hayward states "the Idaho District Court recognized as 'egregious facts,' . . . involving the secret and systematic drug poisoning of an 85 year old man." Petition p. 2. Such statements are Hayward's allegations and argument, not fact. The correct quote of the Idaho District Court was "They are egregious facts *alleged*." (App. 1, Reporter's Transcript of Proceedings, 8/20/99, p. 52, ll. 21-22) (emphasis added). To date, the Respondents have denied these allegations.

B. *Claim that deceased, Delbert Hayward, did not sign an admission form*: Contrary to Hayward's allegations, the decedent did sign an admissions agreement to Valley Vista. (R. Vol. VII, p. 1190).

C. *Claim that Idaho Supreme Court acknowledged Hayward's reliance on federal requirements*: Hayward states the following: "[t]hrough acknowledging Hayward's reliance on federal requirements as imposing contractual obligations upon the defendants, App. 3, the Idaho Supreme Court determined Hayward's contract-based claims pertained solely to the provision of or failure to provide health care. . . . " Petition at 5-6. Nothing in the Idaho Supreme Court's opinion addressed any contractual obligations between the parties. To the contrary, the Idaho Supreme Court's decision was based upon the language of the state's medical malpractice statute, Idaho Code §6-1012, and the available remedies thereunder.

REASONS FOR DENYING THE PETITION

I. THE IDAHO SUPREME COURT DID NOT ADDRESS ANY QUESTION OF FEDERAL LAW WHEN IT DETERMINED THAT THE PETITIONER'S REMEDY UNDER IDAHO CODE §6-1012 WAS A CLAIM FOR PROFESSIONAL MALPRACTICE.

In his petition, Hayward submits that this Court has jurisdiction to entertain this case under 28 U.S.C. §1257. That statute provides, in relevant part:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of

> its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

In this case, the decision of the Idaho Supreme Court, holding that Hayward could not bring a claim in contract against health care providers under Idaho law, was based expressly upon its interpretation of Idaho's medical malpractice statute, Idaho Code §6-1012 (Petition, App. at 17), and Idaho's common law. Because that decision was clearly and expressly based upon state, rather than federal law, Hayward's jurisdictional claim is without merit.

In *Michigan v. Long*, 463 U.S. 1032 (1983), this Court discussed the basis, and under what circumstances, the Court will entertain and review a final decision of a state court, applying state law.[1] In that case, the Court noted that where a state court decision fairly appears to rest primarily upon federal law, or is interwoven with the federal law, and when the adequacy of and independence of any possible state law ground is not clear from the face of the opinion, this Court will accept as the most reasonable explanation that the state court decided the case the way it did because it believed the federal law required it

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[1] *Long* involved a challenge to a warrantless, protective search for weapons where the police officers seized marijuana in the trunk of the defendant's automobile. The State of Michigan challenged a decision of the Michigan Supreme Court, holding that the search was illegal. This Court reversed, holding that the state court's review of the search was based upon federal, rather than state law. 463 U.S. at 1043-44.

to do so.[2] *Id.* at 1040-41. Nonetheless, the Court stated that if the state court decision indicates clearly and expressly that it is based upon bona fide separate, adequate, and independent grounds, review will not be undertaken. *Id.* at 1041.

In this case, the Idaho Supreme Court did not address any question of federal law, nor was it required to do so. The issue presented to the court was whether Hayward could bring a cause of action in contract against health care providers under Idaho law. *See* Petition, App. at 17-19. Based upon the wording of Idaho's medical malpractice statute, Idaho Code §6-1012, and its earlier decisions, the court concluded that Hayward's available remedy was in tort, not contract. Petition, App. at 20.

This Court has been reluctant to invade an area of law within the historic powers of the states' courts to decide. *See Hillsborough County, Florida v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 715-19 (1985). In this case, the Idaho Supreme Court's decision was clearly and expressly predicated upon its interpretation of Idaho law concerning the causes of action available to a litigant bringing suit against a health care provider in Idaho. Regardless of whether the decedent in this case was afforded Medicare or Medicaid benefits while he resided

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[2] The Court also stated that where a state court chooses to rely upon federal precedents as it would upon the precedents of all other jurisdictions, then it need make clear, by a "plain statement," in its judgment or opinion, that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached. 463 U.S. at 1041.

at Valley Vista, the issue of what remedies are available to Hayward is an issue based upon "applicable state law." *See O'Bannon v. Town Court Nursing Center*, 447 U.S. 773, 787, n.20 (1980); *see infra*, Sec. II. Because there was no question of federal law involved, the Respondents respectfully submit that there is no jurisdictional basis for this Court to review the Idaho Supreme Court's decision.

II. THERE IS NO INDICATION THAT CONGRESS INTENDED TO PREEMPT STATE LAW THROUGH ITS ENACTMENT OF MEDICARE AND MEDICAID – THEREFORE, THE PETITIONER'S SUPREMACY CLAUSE CHALLENGE PROVIDES NO BASIS FOR THIS COURT'S REVIEW OF THE IDAHO SUPREME COURT'S DECISION.

Even if this Court determines that jurisdiction is proper, the Respondents submit that Congress did not intend to preempt state common law with respect to an individual's right to pursue private claims against a health care provider. Rather, it left that issue to the state courts to decide. By deciding that such claims must be brought in tort, rather than contract, the Idaho Supreme Court properly addressed Hayward's available remedies under Idaho law.

In his Petition, Hayward concedes that his contract claim is not one "arising under" Medicare and Medicaid, nor is it an implied private cause of action asserted under those Acts. Petition, at 8. Rather, he contends that it is part of the "panoply" of common law remedies that Medicare and Medicaid do not preclude. *Id.* The Respondents submit that such a claim cannot give rise to a preemption

challenge for two reasons. First, neither Medicare nor Medicaid preempt an individual from pursuing individual remedies under state law. Second, because the Idaho Supreme Court has determined that such claims against health care providers in Idaho must be brought in tort, rather than contract, Hayward's available remedies have been properly addressed.

Medicare and Medicaid were enacted by Congress to provide health insurance for the aged and disabled. Both programs authorize the payment of federal funds to reimburse nursing facilities for certain services provided to their residents, so long as the facilities comply with the various federal participation requirements. *Brogdon v. National Healthcare Corporation*, 103 F. Supp. 2d 1322, 1327 (N.D. Ga. 2000). Neither Act preempts residents from bringing action against a nursing home facility for alleged substandard care. In fact, the enforcement provisions of both Medicare and Medicaid, 42 U.S.C. §1395i-3(h)(5), and 42 U.S.C. §1396r(h)(8), evidence an intent by Congress to permit such claims, notwithstanding the participation requirements of the Acts. Both statutes provide, in relevant part:

> The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law.

Id.

In *O'Bannon v. Town Court Nursing Center*, 447 U.S. at 787, n.20, this Court acknowledged that a nursing facility resident may have a claim against a facility for improper

care, but that such a claim would be subject to "applicable state law." Hayward has cited to no authority which refutes this Court's conclusion. To the contrary, he submits that while Medicare and Medicaid do not preclude his contract claim, the Acts somehow preempt the Idaho Supreme Court from exercising its authority to recognize whether such a claim is provided for, at all, under Idaho law. If, as Hayward suggests, the Acts provide a mechanism for private litigants to sue a nursing facility for alleged improper care in state court and under state law, then the Acts cannot preempt state law simply because the state's highest court concludes that such a claim must be brought in tort, not contract, under applicable state law.

In this case, the Idaho Supreme Court addressed the issue of whether, under Idaho law, a plaintiff has a claim in contract for the wrongful death of a nursing home resident arising out of the alleged malpractice of his health care providers. Holding that he did not, the court concluded that such a claim was barred as a result of Idaho's medical malpractice statute, Idaho Code §6-1012. The Idaho Supreme Court's decision was consistent with the Medicare/Medicaid statutes, because it was left for that court to decide what remedies were available to Hayward, under Idaho law.[3]

In an attempt to bolster his preemption argument, Hayward cites the case of *Newman v. Kelly*, 848 F. Supp.

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[3] Both the trial court and the Idaho Supreme Court noted that the claims in Hayward's complaint were for malpractice, regardless of the label assigned to them. Petition, App. 19.

228 (D.D.C. 1994), for the proposition that the comprehensive nature of Medicare and Medicaid is so pervasive that it preempts state law. The Petitioner's citation to that case is misplaced. *Newman* involved a claim brought on behalf of several nursing home patients representing a class of similarly situated individuals, who sought injunctive and declaratory relief to compel the District of Columbia to bring its nursing home regulations in conformance with the Nursing Home Reform Law of 1987. The defendants were federal employees responsible for the licensing of nursing facilities in the District of Columbia. 848 F. Supp. at 231. The federal district court granted the plaintiff's motion for summary judgment, and ordered the District of Columbia to bring its regulations in compliance with the federal law, concluding that Medicare and Medicaid preempted local regulations which still recognized a distinction between "skilled" and "intermediate" care facilities, a distinction abolished under the new law. *Id.* at 233-34. In doing so, the court did not decide, nor was it asked, to determine whether the scope of Medicare and Medicaid regulations was so broad as to preempt the right of individual residents from bringing suit against a nursing home in contract. The suit was brought against government officials responsible for promulgating the District of Columbia's regulations, and not against private individuals.

Neither Medicare nor Medicaid preempt an individual's right to bring a private cause of action against a nursing home. Rather, both Acts provide that such remedies should be consistent with state law. The Idaho Supreme Court properly addressed this issue, based upon its review of Idaho's medical malpractice statute, Idaho

Code §6-1012, and the precedents of its common law. The court concluded that Hayward could bring a suit in tort, but not in contract. As a result, Hayward has no basis to bring this claim before this Court.

III. NEITHER MEDICAID NOR MEDICARE PROVIDE A PRIVATE CAUSE OF ACTION FOR CLAIMS ARISING UNDER THE ACTS – ANY PRIVATE CAUSE OF ACTION IS GOVERNED BY STATE LAW WHICH IN THIS INSTANCE DOES NOT PROVIDE A BASIS FOR THE PETITIONER'S BREACH OF CONTRACT CLAIMS.

In his Petition, Hayward concedes that neither Medicare nor Medicaid provide a private cause of action for claims arising under those Acts. Petition, p. 8. Rather, he contends that the Idaho Supreme Court's failure to recognize his claim ignored the contractual terms predicated upon Valley Vista's compliance with the Medicare and Medicaid law. *Id.*

The Petitioner's argument does not comport with this Court's treatment of Medicare and Medicaid. In *O'Bannon, supra,* this Court concluded that nursing home residents were not entitled to a hearing prior to the State of Pennsylvania's decertifying of their nursing home from the Medicare and Medicaid programs. In addressing the concerns of the residents – that they may suffer physical or emotional side effects as a result of their transfer – this Court noted that such impacts, which are indirect and incidental results of the government's enforcement action, did not amount to a deprivation of the resident's life, liberty or property interest sufficient to guarantee them the right to a pre-termination hearing. 447 U.S. at

787. This Court went on to conclude that the individual resident's damages, if any, sustained as a result of such impacts, could properly be addressed pursuant to "applicable state law." *Id.*, n.20. This is what the Idaho Supreme Court decided in this case, holding that Hayward had a right to a medical malpractice claim, based in tort under Idaho law. In doing so, the Idaho Supreme Court authorized Hayward to proceed with his wrongful death claim, the same as any other similarly situated claimant in Idaho.

The Petitioner's reliance upon *Brogdon v. National Healthcare Corporation, supra,* to reach the opposite conclusion, is misplaced. In *Brogdon,* the Plaintiffs, patients and former patients of a nursing home, brought suit against the facility for alleged failure to provide for their safety, health and well-being. In denying the nursing home's petition to dismiss as to the parties' third party breach of contract claim, the federal district court noted that such a claim was not precluded under Medicare and Medicaid, but was rather a question of state law. 103 F. Supp. 2d at 1334. In doing so, the court noted that because the claim was between private litigants, and there was no indication that Congress intended to displace state law, the Plaintiff's claims could proceed. *Id.* at 1334, 1342-43. The court noted that the federal interest in enforcing a state contract is likely no greater than the state interest, acknowledging that state law should control. *Id.* at 1342.

Here, the interests of Idaho in determining the remedies available to its citizens in a claim for medical malpractice against a nursing home is, and should be, a question of state law, to be decided ultimately by the

Idaho Supreme Court. Hayward's failure to cite any precedents to the contrary precludes his contention that this Court should review his contract claim.

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX 1

IN THE SUPREME COURT OF THE
STATE OF IDAHO

ALFRED S. HAYWARD,	)	
	)	
Plaintiff-Appellant,	)	SUPREME COURT
	)	
vs.	)	NO. 26008
	)	
VALLEY VISTA CARE CORPORATION, et al.,	)	
	)	
	)	
Defendants-Respondents.	)	

TRANSCRIPT ON APPEAL

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Hearing of August 20, 1999

APPEAL FROM THE DISTRICT COURT
OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR
THE COUNTY OF BENEWAH
THE HONORABLE CRAIG C. KOSONEN, PRESIDING

* * *

[52] plaintiffs lose nothing if the thing is sent to the state court. And again on a later pleading he concedes, "However, a review of the plaintiff's estate claim in the state court revealed that he raises causes of action for negligence, malpractice, false imprisonment, breach of contract, and wrongful death."

THE COURT: Is that one of the – that's your cite from the federal court proceeding?

MR. EYMANN: Yeah. And that's his representations to the court in the federal court proceedings.

THE COURT: I'm not persuaded by that.

MR. EYMANN: I understand.

THE COURT: And I'll – I'll formalize that so you can appeal it, if necessary.

I want to take a couple of days to look at this thing so I can cite a case that says what Mr. Miller says is the law and I seem to recall as the law. but without being sure, I don't want to – I don't want to put the plaintiffs out of court without being absolutely certain of this. They are egregious facts alleged.

MR. HAYWARD: Your Honor, can I add one comment on something?

THE COURT: Yes.

* * *